WP(C) 4488/2006
BEFORE
HON'BLE JUSTICE B.K. SHARMA

Heard Mr. KN Choudhury, learned Sr. Counsel, assisted by Mr. S. Shyam, learned c ounsel for the petitioner.

2. By means of this writ petition, the petitioner has assailed the orders a nd certificate of the Debt Recovery Tribunal (DRT) and consequential orders of a ttachment of property towards liquidation of the certificate amount.

3. On an earlier occasion, the petitioner has approached this Court by fili ng the writ petition being WP(C) No. 8131/2005 with the same very prayer except the challenge to the impugned order involved in this proceeding, which has been passed on the basis of the review application filed by the petitioner before the Tribunal. The writ petition was closed with the order dated 2.12.2005 holding t hat the decree in question passed by the Tribunal being in the nature of a decre e passed by the Civil Court, the writ petition is not entertainable. However, on the basis of the prayer made on behalf of the petitioner, liberty was granted t o approach the Tribunal, if so advised by filing application for review.

4. Adverting to the facts of the case, the petitioner stood guarantor for t he respondent No. 2 in respect of a loan obtained from State Bank of India, the respondent No. 1. According to the petitioner, the loan amount of Rs. 5,00,000/- for which he stood guarantor having been repaid, he does not have any more liab ility. However, the Bank filed title suit being T.S. No. 16/1991 against the loa nee as well as the present petitioner as party defendants for realization of Rs. 16,27,069.55 p. Referring to Annexure-1 and 2 documents annexed to the writ pet ition, it is the case of the petitioner that he was only responsible for the amo unt of Rs. 5,00,000/- involved in Annexure-1 loan agreement and not in Annexure-2 Agreement for Cash Credit of Rs. 15,00,000/- and he has been unnecessarily sad dled with the same.

5. The title suit was decreed in favour of the Bank being aggrieved by whic h the defendants preferred Civil Appeal No. 1/1998 which was disposed of by orde r dated 20.4.1998 holding that the judgment and decree passed by the Trial Court was unauthorized in view of the provisions of the Recovery of Debts due to Bank s and Financial Institutions Act, 1993 and accordingly, while setting aside the decree, the original case records of the title suit was sent to the Tribunal for fresh adjudication. The title suit was registered and numbered as O.A. No. 69/1 998 and the final order was passed on 24.5.2001 allowing the application in favo ur of the Bank and holding that both the defendants were jointly and severely li able for payment of Rs. 16,27,069.55 p. besides the interest and other amounts.

6. The above order has attained the finality and necessary certificate unde r Section 19 of the Act has also been issued. Such certificate was issued in Apr il, 2001. The alleged grievance for the petitioner started on 14.6.2005, when th e Tribunal passed an order authorizing the Chief Manager, State Bank of India Ai zwal Branch to conduct the attachment on behalf of the DRT and then to submit re port. Such attachment was to be made in respect of the petitioner. Be it stated here that the attachment of the property of the loanee was already made. After t he attachment of the property, it was put to auction sale by observing necessary formalities. Auction sale was duly notified. It was at that stage, the aforemen tioned writ petition was filed, which was closed by order dated 2.12.2005.

7. In the order passed by this Court, it has been clearly held that in view of the provisions for appeal under Section 20 of the Act, the petitioner having had specific statutory remedy, the writ petition is not maintainable. Being con fronted with such a finding, the learned counsel for the petitioner sought for t

he liberty to file the review application before the Tribunal and the liberty wa s granted. The writ petition was disposed of observing thus:

\At the outset, a question arose about the maintainability of the writ petition as raised by Mr. Sarma, learned Standing Counsel for SBI. The DRT Act having bee n provided a provision for appeal under Section 20 of the Act, the petitioner ha s a specific statutory remedy available under the statute itself. In view of tha t matter, the writ petition is barred by such statutory remedy.

Although Mr. KN Choudhury, learned Sr. Counsel has raised before this Court that the Appellate tribunal having been situated at Kolkata, it becomes difficult fo r the people of North Eastern Region to appear before the Appellate tribunal. Th is a matter to be decided by the legislature and not by this Court. The Act prov ides that an appeal lies against such an order and it is a statutory provision. That apart, the decree passed by the learned Tribunal being in the nature of a d ecree passed by the Civil Court, the Writ Court (sic) is not entertainable in su ch cases.\

8. The review application having been dismissed by the impugned order, the petitioner has now once again invoked the writ jurisdiction of this Court. Upon hearing the learned counsel for the petitioner two issues have come up for consi deration. They are - (i) whether the writ petition is maintainable and (ii) whet her the impugned order deserves interference under Article 226 of the Constituti on of India?

9. As regards the first issue, once this Court has held in the earlier writ proceeding that the writ petition is not maintainable in view of the statutory alternative remedy, I am of the considered opinion that the second writ petition in the garb of the review order passed cannot be held to be maintainable. Even otherwise also, if the petitioner is aggrieved by the impugned order dated 23.8. 2006 passed by the Tribunal, he has specific statutory remedy open in terms of t he Section 20 of the Act. Particular fee has been prescribed for preferring appe al. Rule 8 of the Debts Recovery Appellants Tribunal (Procedure) Rules, 1994 pre scribes particular fee to be accompanied the appeal. Such statutory alternative remedy cannot be bypassed in the normal circumstances.

10. In Punjab National Bank Vs. O.C. Krishnan reported in 2001 AIR SCW 2993, the Apex Court in reference to Section 20 of the Act observed that the High Cou rt ought not to have exercise jurisdiction in view of the statutory alternative remedy by way of an appeal and the judicial prudence demands that the Court refr ains from exercising its jurisdiction under the constitutional provisions. In th is connection, the observations in paragraph 5 and 6 of the judgment are quoted below:

\5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under S.20 of the Recovery of Debts Due to Ba nks and Financial Institutions Act, 1993 (for short' the Act'). The High Court o ught not to have exercised its jurisdiction under Art. 227 in view of the provis ion for alternative remedy contained in the Act. We do not propose to go into th e correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recov ery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under S.20 and this fast track procedure cannot be allowed to be derailed either taking recourse to proceedings under Art. 226 and 227 of the Constitution or by filing a civil suit , which is expressly barred. Even though a provision under an Act cannot express ly oust the jurisdiction of the Court under Art. 226 and 227 of the Constitution , nevertheless when there is an alternative remedy available judicial prudence d

emands that the Court refrains from exercising its jurisdiction under the said c onstitutional provisions. This was a case where the High Court should not have e ntertained the petition under Art. 227 of the Constitution and should have direc ted the respondent to take recourse to the appeal mechanism provided by the Act. \

11. I cannot persuade myself to accept the submission that irrespective of t he appellate provision, to soften the rigor, recourse can be had to the high Cou rt by way of a petition under Article 226 and 227 of the Constitution, in the ki nd of situation in which the present case is in. The resort to Article 226 and 2 27 of the Constitution needs to be discouraged when there is an alternative reme dy. A more satisfactory solution is available on the terms of the statute itself .

12. This Court in its decision dated 24.11.2005 in M/s. Eastern Agency Vs. S tate of Assam & Ors. evenafter noticing the grievance of the petitioner in that case that the particular report was not furnished having regard to the alternati ve statutory remedy of appeal declined to entertain the writ petition so as to e xercise the discretionary power. Incidentally in that case, learned counsel for the petitioner had appeared before the respondents and it was submitted that the writ appeal preferred against the said judgment and order has also been dismiss ed. As observed by the Apex Court in Transmission Corporation of A.P. Vs. Ch. Pr abhakar & Ors. as reported in (2004) 5 SCC 551, in proceeding under Article 226 , the High Court cannot sit as a court of appeal to re-appreciate the evidence f or itself or to correct an error of fact, however, apparent it might be on the g round that the evidence on which it was based was not satisfactory or sufficient . The Apex Court further observed that the proceedings under Article 226 are not a substitute for an appeal.

13. Once it is held that the writ petition is not maintainable in view of al ternative statutory remedy, the next issue, really speaking is redundant. The Tr ibunal, in its detailed order has dealt with the contentions raised in the revie w petition. It has been rightly observed that the scope of review is limited and cannot be construed as an appeal. It has been rightly observed that once a reas oned order on merit has been passed, wrong or right, the same forum cannot re-he ar the case by allowing re-argument in the matter of fresh decision in the case. The Tribunal has noticed that there is a real distinction between a merely erro neous decision and a decision, which can be characterized as vitiated by \error apparent\ and that review is not an appeal in disguise.

14. In the above context, the observation of the Apex Court, in the case of Sow. Chandra Kanta Vs. Sheik Habib, reported in AIR 1975 SC 1500 is quoted below :

\A review of a judgment is a serious step and reluctant resort to it is proper o nly where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition to through different counsel of old and overruled arguments, a second trip over ineffectually covered ground or minor mistake of inconsequential import are obviously insufficient. The very stick need for compliance with these factors is the rational behind the insisten ce of counsel’s certificate, which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the pre cious public time lost what with a huge backlog of dockets waiting queue for dis posal, for counsel to issue easy certificates for entertainment of review and fi ght over again the same battle which has been fought and lost. The Bench and the Bar, were sure are jointly concerned in the conservation of judicial time for m aximum use.\

15. In view of the above, I am of the considered opinion that the writ petit ion is misconceived and is not maintainable on both counts. Accordingly, it is d

ismissed.

JUDGE

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